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House of Representatives

The House met at noon and was called to order by the Speaker pro tempore (Mr. HARRIS).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
January 9, 2017.

I hereby appoint the Honorable ANDY HARRIS to act as Speaker pro tempore on this day.

PAUL D. RYAN,
Speaker of the House of Representatives.

MORNING-HOUR DEBATE

The SPEAKER pro tempore. Pursuant to the order of the House of January 3, 2017, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning-hour debate.

The Chair will alternate recognition between the parties, with each party limited to 1 hour and each Member other than the majority and minority leaders and the minority whip limited to 5 minutes, but in no event shall debate continue beyond 1:50 p.m.

FAITHLESS ELECTOR PROBLEM

The SPEAKER pro tempore. The Chair recognizes the gentleman from Alabama (Mr. BYRNE) for 5 minutes.

Mr. BYRNE. Mr. Speaker, last Friday the House and the Senate met to fulfill our solemn constitutional responsibility to count the votes of electors for President and Vice President. This year the joint session was confronted with a record number of so-called faithless electors—electors who were supposed to vote for the Presidential candidates named on their States' ballot, but, instead, voted for someone else.

Different States handle their faithless electors in different ways. In my view, the joint session rightly fulfilled its constitutional responsibility by simply taking the certified results of each State without intervention. This was in line with precedent set in 1969 and with the text of the Constitution.

Because I believe this decision to be correct, I did not file an objection during the counting process. However, I wish for the RECORD to contain my views on this matter and to express my concern that an avoidable constitutional crisis on this subject is a very real possibility in the future.

The faithless elector problem has often been seen as academic, but in 2000, Vice President Gore was three faithless electors away from the Presidency. As a point of reference, there were 10 faithless electors in this election. Thus, this is not a matter that should be taken lightly.

Article II, Section 1, Clause 2 of the Constitution gives the States the exclusive power to appoint electors in a manner decided by their State legislatures. Clause 4 provides the sole grant of authority to Congress in the process to determine the time for choosing electors and the day they cast their vote.

The process to count electors is outlined in Clause 3 and identical language which superseded it in the 12th Amendment. It provides that, "The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted. . . ." Under the 12th Amendment, the persons receiving a majority of the vote "shall be" the President and Vice President.

The extent of what Congress' powers are in the counting process has been the subject of over 200 years of debate. The CONGRESSIONAL RECORD from 1800 includes a lengthy speech by Senator Charles Pinckney, a Framers of the

Constitution, who stated that as the Framers wished the President to be independent, "It never was intended . . . to have given to Congress . . . the right to object to any electoral vote."

The first successful effort to expand Congress' power in counting did not come until 1865, when Congress adopted a joint House-Senate rule on the subject. Under the rule, no electoral vote that incurred an objection could be counted unless both Houses agreed.

The joint rule was tempered by the Electoral Count Act of 1887, which still governs the counting process to this day. The law allows an objection signed by a House and a Senate Member. However, under the Electoral Count Act, unless there is a case of double returns, no electoral vote regularly given and lawfully certified shall be rejected.

In 1969, Dr. Lloyd Bailey, a Republican elector from North Carolina, was faithless, and the Governor of North Carolina certified the State's electoral certificate with knowledge of his vote.

The House and the Senate thoroughly debated whether Dr. Bailey's vote should be counted, but ultimately voted to reject the challenge. Opponents of the challenge, in my view, properly argued that Congress lacked the power to exclude Dr. Bailey's vote under the Electoral Count Act and, more importantly, Congress had no power to exclude his vote under the Constitution. To do so would be a violation of the rights of the sovereign States.

Some have argued that the Bailey precedent is not applicable when an elector violates his or her State's law in casting a faithless vote. I find this argument constitutionally suspect. Unless no candidate reaches a majority, Congress' role in the counting process appears to be ministerial: to count votes and announce a result.

For that reason, the issue of faithless electors is rightly resolved at the State level, before the results reach Congress. At the present time, however, a

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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hodgepodge of State laws exist to deal with faithless electors, some of which are ill-equipped to handle the problem.

Fortunately, the Uniform Law Commission has proposed the Faithful Presidential Electors Act, which has already been enacted in four States. The Faithful Presidential Electors Act provides a State-administered pledge of faithfulness, with any attempt by an elector to submit a vote in violation of that pledge constituting a resignation from the office of elector. In such case, the act provides a mechanism for filling an electoral vacancy.

At the conclusion of my remarks, I will include in the RECORD a copy of the Faithful Presidential Electors Act.

In short, Mr. Speaker, based upon my view of the Constitution, Congress properly handled the issue of faithless electors in this election. This election should, however, serve as a wake-up call to States that further action on their part may be necessary.

UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

(Drafted by the National Conference of Commissioners on Uniform State Laws and by it Approved and Recommended for Enactment in All the States at its Annual Conference Meeting in Its One-Hundred-and-Nineteenth Year in Chicago, Illinois July 9-16, 2010 Without Prefatory Note or Comments)

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UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Faithful Presidential Electors Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Cast" means accepted by the [Secretary of State] in accordance with Section 7(b).

(2) "Elector" means an individual selected as a presidential elector under [applicable state statute] and this [act].

(3) "President" means President of the United States.

(4) ["Unaffiliated presidential candidate" means a candidate for President who qualifies for the general election ballot in this state by means other than nomination by a political party.]

[(5)] "Vice President" means Vice President of the United States.

SECTION 3. DESIGNATION OF STATE'S ELECTORS. For each elector position in this state, a political party contesting the position[, or an unaffiliated presidential candidate,] shall submit to the [Secretary of State] the names of two qualified individuals. One of the individuals must be designated "elector nominee" and the other "alternate elector nominee". Except as otherwise provided in Sections 5 through 8, this state's electors are the winning elector nominees under the laws of this state.

Legislative Note: For a state wishing to accommodate unpledged electors, the following three sentences could be substituted for the first two sentences of Section 3: "Any political party [or unaffiliated presidential candidate] advancing candidates for elector positions in this state shall submit to the [Secretary of State] the names of two qualified individuals for each elector position to be contested. One of the individuals must be designated "elector nominee" and the other "alternate elector nominee". Any unpledged

candidate for the position of elector who is not nominated by a political party or unaffiliated presidential candidate shall submit to the [Secretary of State], in addition to the individual's own name as "elector nominee", the name of another qualified individual designated as "alternate elector nominee".

SECTION 4. PLEDGE. Each elector nominee and alternate elector nominee of a political party shall execute the following pledge: "If selected for the position of elector, I agree to serve and to mark my ballots for President and Vice President for the nominees for those offices of the party that nominated me." [Each elector nominee and alternate elector nominee of an unaffiliated presidential candidate shall execute the following pledge: "If selected for the position of elector as a nominee of an unaffiliated presidential candidate, I agree to serve and to mark my ballots for that candidate and for that candidate's vice-presidential running mate."] The executed pledges must accompany the submission of the corresponding names to the [Secretary of State].

Legislative Note: This act does not deal with the possibility of death of a presidential or vice-presidential candidate before the electoral college meetings, or with any other disabling condition or the discovery of disqualifying information. A state may choose to deal separately with one or another of these possibilities.

SECTION 5. CERTIFICATION OF ELECTORS. In submitting this state's certificate of ascertainment as required by 3 U.S.C. Section 6, the [Governor] shall certify this state's electors and state in the certificate that:

(1) the electors will serve as electors unless a vacancy occurs in the office of elector before the end of the meeting at which elector votes are cast, in which case a substitute elector will fill the vacancy; and

(2) if a substitute elector is appointed to fill a vacancy, the [Governor] will submit an amended certificate of ascertainment stating the names on the final list of this state's electors.

SECTION 6. PRESIDING OFFICER; ELECTOR VACANCY.

(a) The [Secretary of State] shall preside at the meeting of electors described in Section 7.

(b) The position of an elector not present to vote is vacant. The [Secretary of State] shall appoint an individual as a substitute elector to fill a vacancy as follows:

(1) if the alternate elector is present to vote, by appointing the alternate elector for the vacant position;

(2) if the alternate elector for the vacant position is not present to vote, by appointing an elector chosen by lot from among the alternate electors present to vote who were nominated by the same political party [or unaffiliated presidential candidate];

(3) if the number of alternate electors present to vote is insufficient to fill any vacant position pursuant to paragraphs (1) and (2), by appointing any immediately available individual who is qualified to serve as an elector and chosen through nomination by and plurality vote of the remaining electors, including nomination and vote by a single elector if only one remains;

(4) if there is a tie between at least two nominees for substitute elector in a vote conducted under paragraph (3), by appointing an elector chosen by lot from among those nominees; or

(5) if all elector positions are vacant and cannot be filled pursuant to paragraphs (1) through (4), by appointing a single presidential elector, with remaining vacant positions to be filled under paragraph (3) and, if necessary, paragraph (4).

(c) To qualify as a substitute elector under subsection (b), an individual who has not executed the pledge required under Section 4 shall execute the following pledge: "I agree to serve and to mark my ballots for President and Vice President consistent with the pledge of the individual to whose elector position I have succeeded."

Legislative Note: As with Sections 3 and 4, adjustment of this Section is required for any state where unpledged electors are permissible. For a state wishing to accommodate unpledged electors, the language of subsections (b)(2), (b)(3), and (c) could be changed to the following:

(b)(2): "if the alternate elector for the vacant position is not present to vote but other alternate electors who were nominated by the same political party [or unaffiliated presidential candidate] are present, by appointing an elector chosen by lot from among those alternate electors of the same political party [or of the same unaffiliated presidential candidate]."

(b)(3): "if the vacant position is that of an unpledged elector and the alternate elector for that vacant position is not present to vote, or if there otherwise are no alternate electors eligible for the vacant position under paragraphs (1) and (2), by appointing any immediately available individual who is qualified to serve as an elector and has been chosen through nomination by and plurality vote of the remaining electors, including nomination and vote by a single elector if only one remains."

(c): "To qualify as a substitute elector for a vacant position associated with an elector who had executed a pledge, an individual who has not executed the pledge required under Section 4 shall execute the following pledge: "I agree to serve and to mark my ballots for President and Vice President consistent with the pledge of the individual to whose elector position I have succeeded"."

SECTION 7. ELECTOR VOTING.

(a) At the time designated for elector voting and after all vacant positions have been filled under Section 6, the [Secretary of State] shall provide each elector with a presidential and a vice-presidential ballot. The elector shall mark the elector's presidential and vice-presidential ballots with the elector's votes for the offices of President and Vice President, respectively, along with the elector's signature and the elector's legibly printed name.

(b) Except as otherwise provided by law of this state other than this [act], each elector shall present both completed ballots to the [Secretary of State], who shall examine the ballots and accept as cast all ballots of electors whose votes are consistent with their pledges executed under Section 4 or 6(c). Except as otherwise provided by law of this state other than this [act], the [Secretary of State] may not accept and may not count either an elector's presidential or vice-presidential ballot if the elector has not marked both ballots or has marked a ballot in violation of the elector's pledge.

(c) An elector who refuses to present a ballot, presents an unmarked ballot, or presents a ballot marked in violation of the elector's pledge executed under Section 4 or 6(c) vacates the office of elector, creating a vacant position to be filled under Section 6.

(d) The [Secretary of State] shall distribute ballots to and collect ballots from a substitute elector and repeat the process under this section of examining ballots, declaring and filling vacant positions as required, and recording appropriately completed ballots from the substituted electors, until all of this state's electoral votes have been cast and recorded.

SECTION 8. ELECTOR REPLACEMENT; ASSOCIATED CERTIFICATES.

(a) After the vote of this state's electors is completed, if the final list of electors differs from any list that the [Governor] previously included on a certificate of ascertainment prepared and transmitted under 3 U.S.C. Section 6, the [Secretary of State] immediately shall prepare an amended certificate of ascertainment and transmit it to the [Governor] for the [Governor's] signature.

(b) The [Governor] immediately shall deliver the signed amended certificate of ascertainment to the [Secretary of State] and a signed duplicate original of the amended certificate of ascertainment to all individuals entitled to receive this state's certificate of ascertainment, indicating that the amended certificate of ascertainment is to be substituted for the certificate of ascertainment previously submitted.

(c) The [Secretary of State] shall prepare a certificate of vote. The electors on the final list shall sign the certificate. The [Secretary of State] shall process and transmit the signed certificate with the amended certificate of ascertainment under 3 U.S.C. Sections 9, 10, and 11.

SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 10. REPEALS. The following are repealed:

- (1) . . .
- (2) . . .
- (3) . . .

SECTION 11. EFFECTIVE DATE. This [act] takes effect . . .

NATIONAL LAW ENFORCEMENT APPRECIATION DAY

The SPEAKER pro tempore. The Chair recognizes the gentleman from Washington (Mr. REICHERT) for 5 minutes.

Mr. REICHERT. Mr. Speaker, today is National Law Enforcement Appreciation Day.

Behind me are the faces of 135 men and women. They are the faces of those who paid the ultimate price serving and protecting us this past year so that our families and our children can live safe and enjoy our freedom. As you can see, freedom isn't free.

You may not know or recognize these faces, but you know the faces of others who have served or that are serving today. They are the faces of our brothers, sisters, mothers, fathers, and friends. Some were ambushed and executed. Some lost their lives responding to a call to save a life, someone who called for help.

Tacoma police officer Jake Gutierrez, from my home State of Washington, is one of the faces behind me. He lost his life in the line of duty just last month while trying to protect a woman from domestic violence.

Jake was supposed to have exchanged wedding vows with his fiancée in just a few weeks. Instead, she and his three daughters and granddaughter attended his funeral and tried to picture a life without Jake.

Tragically, again last month, a time meant for celebration was filled with another Washington family's sorrow. Veteran officer Mike McLaughry from

the Mount Vernon Police Department was shot in the head while responding to a call for help. Today his children, wife, friends, and family sit by his hospital bed and his life now hangs in the balance in the hands of God and his doctors.

This feeling of loss is one that I am also familiar with. In 1982, my partner and best friend, Sergeant Sam Hicks, was shot to death attempting to arrest a murder suspect. He left behind his wife and five sons. That was over 30 years ago, but the loss of a loved one is a pain that cannot be forgotten, cannot be erased.

This national day of appreciation is not only a day to reflect and appreciate the service of those who have served, but those that are serving today. They are driving, walking, patrolling your neighborhoods, keeping us safe. They are ready to put their lives on the line, yes, but every day they do so much more for us that goes unnoticed:

The officer that took the stolen bike report on Christmas Day and the next day delivered a new bicycle to that little boy's home;

How about the officer who anonymously buys groceries for a needy family;

The officer who counseled a little girl who was being bullied because of the clothes she wore and then bought her a new set of clothes;

How about the officer who went to a call where he had to cradle a 2-month-old baby in his arms, giving CPR to his little, fragile blue face, hoping for the best news, fearing the worst—and getting the worst—and then headed off to his next call;

The officer that held the hand of a dying man after a motorcycle accident and then sharing his last words with his family;

The officer who was spit on, ridiculed, and insulted by a man threatening to kill the officer and his wife and then minutes later saving that same man from taking his own life with a butcher knife.

These men and women are coaches, volunteers, and mentors, helping people find jobs, feeding the homeless, helping them find homes, and sometimes even taking them into their own homes. These are real people. They are your neighbors, they are your friends, and they are us. This is not a job for them. It is a calling. They serve because they want to help. They want to make a difference. They serve with the heart of a servant.

On this day, let us take a moment to appreciate all members of the law enforcement community across this Nation and their families by putting a blue light in your window or on your front porch. This is not just a sign of appreciation for law enforcement across this country, but a sign, a small symbol of unity for us all. We need that now in our Nation more than anything. Help us remember that we are one nation under God, indivisible, with liberty and justice for all.

Most people don't know, but I am a big James Brown fan and I really like the way he puts it in a not so well-known song from the sixties about America. He says:

America is the greatest country in the world. America is the greatest country in the world . . . Now Black and White they may fight, but when the enemy comes, we get together and we run 'em out of sight.

This is a Black man in the sixties with these positive words about our country.

Mr. Speaker, I say this: That we take James Brown's words, we take his advice, and we get together. The enemy is here. That enemy is hate. We get together and we run them out of sight.

Now, Mr. Speaker, I would like to observe a moment of silence, please, for two officers who were killed in Florida just today on National Law Enforcement Appreciation Day. These are two more officers killed today, just hours ago.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 12 o'clock and 12 minutes p.m.), the House stood in recess.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HOLDING) at 2 p.m.

PRAYER

The Chaplain, the Reverend Patrick J. Conroy, offered the following prayer:

Loving God, we give You thanks for giving us another year.

At the beginning of this new day, we are grateful as individuals and as a nation for all the blessings we have been given.

We ask Your blessing upon the Members of this people's House as they reconvene for this first session. May they anticipate the opportunities and difficulties that are before them, and before so many Americans, with steadfast determination to work together toward solutions that will benefit their countrymen. Grant that they be worthy of the responsibilities they have been given by their constituents and truly be the people You have called them to be.

May Your Spirit, O God, be in all of our hearts and minds and encourage us to do the works of peace and justice now and always.

May all that we do be done for Your greater honor and glory.

Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the